

1 RECORDING REQUESTED BY

2 AND WHEN RECORDED MAIL TO:

3
4 Santa Fe Pacific Realty Corporation

5 3230 E. Imperial Hwy., Ste. 100

6 Brea, CA 92621

7
8 Attention: Clay M. Smith, Assistant General Counsel

IC SUBSTANCES
CONTROL DIVISION

MAY 3 1990

CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, SACRAMENTO

RECORDED AT REQUEST OF

MAR 16 1990

AT 12 O'CLOCK
CONTRA COSTA COUNTY RECORDER
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

4/00

BOOK 157250 240

11 DECLARATION OF COVENANTS

12 Point Isabel

13 THIS DECLARATION OF COVENANTS ("Declaration") is made as of the
14 19th day of February, 1990, by SANTA FE PACIFIC
15 REALTY CORPORATION, successor-in-interest by merger with
16 SANTA FE LAND IMPROVEMENT COMPANY, a California Corporation,
17 ("Owner") who is the owner of record of certain real property
18 situated in Contra Costa County, State of California described
19 in Exhibit A attached hereto and incorporated herein by this
20 reference (the "Property").

21
22 ARTICLE I

23 RECITALS

24
25 A. Owner has caused to be performed on the Property a work of
26 improvement known as the Pt. Isabel Remedial Program, Final
27

1 Remedial Action Plan dated February 12, 1985 (the "Plan"),
2 which Plan was approved by the California Department of
3 Health Services on March 18, 1985. The Plan includes
4 certain components including, but not limited to, the
5 containment of hazardous waste within and beneath the
6 surface of the Property, an imported soil cap, a perimeter
7 roadway, drainage facilities, grading and berming, and
8 stabilization of certain portions of the shoreline by
9 installation of a synthetic membrane and rock.
10

11 B. The California Water Quality Control Board, San Francisco
12 Bay Region issued its Order No. 87-14 on February 18, 1987,
13 requiring Owner to submit "land title and deed restric-
14 tions" for the Property. This declaration is made pursuant
15 to and in compliance with said Order No. 87-14.
16

17 C. Owner desires and intends that, in order to protect the
18 present and future public health and safety, (i) the
19 Property shall be used for industrial, manufacturing,
20 warehouse, office, research and development, restaurant,
21 recreational, or general commercial purposes in such a
22 manner as to avoid potential harm to persons or property
23 which may result from hazardous wastes which exist on the
24 Property, and (ii) the future use of the Property shall not
25 materially disturb the integrity of the Plan, except as
26 provided in Section 3.1 of this Declaration.
27

1 THEREFORE, Owner hereby declares and covenants as follows:

2
3 ARTICLE II

4 DEFINITIONS

5
6 2.1 Department. "Department" shall mean the California State
7 Department of Health Services and shall include its successor
8 agencies, if any.

9
10 2.2 Administrator. "Administrator" shall mean the Regional
11 Administrator of the Department's Region 2 office or his or her
12 successor or designee.

13
14 2.3 Improvements. "Improvements" shall mean all buildings;
15 roads, driveways, and paved parking areas, constructed or placed
16 upon any portion of the Property.

17
18 2.4 Occupants. "Occupants" shall mean owners and those persons
19 entitled, by ownership, leasehold interest, or other legal
20 relationship, to the exclusive right to occupy any portion of
21 the Property.

22
23 2.6 Owner. "Owner" shall mean Santa Fe Pacific Realty
24 Corporation, a Delaware corporation, or its successors-in-
25 interest, including transferees, heirs and assigns, who hold
26 title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Limitation on Use. Owner covenants to limit the use of the Property to industrial, manufacturing, warehousing, office, research and development, restaurant, limited recreational or general commercial purposes. Permitted recreational activities shall not endanger the environment, public health or the integrity of the Plan. No portion of the Property shall be used for residential, hospital or other medical care, day care, or school purposes without the written consent of the Department. Owner further covenants that no future use of the Property shall be allowed to endanger the environment and public health or disturb the integrity of the Plan, unless Owner and the Department are reasonably satisfied, based on competent available engineering technology and data that the disturbance:

- 1) is necessary to the proposed use of the Property, and the potential hazard, if any, to human health or the environment presented by the Property will not be substantially increased by such disturbance, and the notice has been given in accordance with Section 3.3 of this Declaration; or

1 2) is necessary to respond to an emergency which
2 constitutes a threat to human health or the
3 environment which reasonably appears to be of
4 sufficient significance to justify the risks, if any,
5 to human health or the environment resulting from such
6 disturbance, and the notice required by Section 3.3
7 of this Declaration has been or shall promptly
8 thereafter be given. Any such disturbance shall be
9 limited to the extent necessary to respond to the
10 emergency only.

11
12 As used in the first paragraph of this Section 3.1, the phrase
13 "disturb the integrity of the Plan" means an act which
14 significantly reduces the capability of the Plan to contain the
15 waste located within the Property and results in an increased
16 risk to public health.

17
18 3.2. Conveyance of Property. Owner shall give notice to the
19 Department not later than thirty (30) days prior to any sale of
20 the Property or a substantial interest in the Property (which
21 shall not include customary utility easements or leases of space
22 within buildings) to a third person. The Department shall not,
23 by reason of this Covenant, have authority to approve,
24 disapprove, or otherwise affect any sale, or other conveyance of
25 the Property, except as otherwise provided by law.
26
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1 3.3. Construction of Improvements. Prior to the commencement
2 of construction by Owner, Occupant, or third parties of any
3 Improvement which disturbs the integrity of the plan, Owner or
4 Occupant shall give not less than one hundred twenty (120) days
5 advance notice to the Department.
6

7 1) In the event that any soil or other material on the
8 Property is excavated in connection with such construction,
9 such material shall be handled by Owner, its agents and
10 contractors, as hazardous waste unless Owner demonstrates
11 by sampling and analysis that such material is not
12 hazardous waste under the applicable law and regulations.
13

14 2) The Department shall approve or disapprove the proposed
15 disturbance in writing within 90 days of its receipt of
16 such notice. If no such action occurs within such 90 days,
17 Owner or Occupant may proceed with the proposed
18 construction pursuant to paragraph one above.
19

20 3) If the proposed disturbance is disapproved, the Department
21 and Owner or Occupant shall meet and confer in order to
22 resolve the basis for the Department's disapproval.
23
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1 3.4 Enforcement.

2
3 3.4.1 Failure of any Owner or Occupant to comply with any
4 of the requirements as set forth in Paragraphs 3.1 or 3.3 above
5 shall be grounds for the Department, by reason of this
6 Declaration, to have the authority to require tht such Owner or
7 Occupant modify or remove such Improvements. This covenant
8 shall also be enforceable by the Department pursuant to Chapter
9 6.8 of the California Health and Safety Code, including the
10 right of the Department to seek the imposition of civil or
11 criminal sanctions, as allowed by law.
12

13 3.4.2 Owner hereby grants unto the Department an easement
14 to enter upon the Property following three (3) days prior notice
15 to Owner (except in cases of public emergency) at reasonable
16 times and in a reasonable manner to monitor and inspect the
17 integrity of the remedial measures which are components of the
18 Plan (as defined in Recital A) and Owner's compliance with this
19 Declaration and to perform any emergency maintenance of the
20 components of the Plan; provided, however, that following
21 construction of any Improvement, this easement shall not entitle
22 the Department to enter any such Improvement unless the
23 Department is otherwise permitted to do so by statute, ordinance
24 or other provision of law. To the extent possible, the
25 Department shall provide Owner with the opportunity to perform
26
27

1 any emergency maintenance before the Department undertakes such
2 action.

3
4 3.5 Incorporation into Deeds and Leases. Owner covenants that
5 this Declaration shall be incorporated by reference in each deed
6 and lease of any portion of the Property, pursuant to Sections
7 1468 and 1469 of the California Civil Code. Each said deed and
8 lease shall also include the following statement:
9

10 "The Property contains hazardous waste which has been
11 remedied in a manner approved by the California Department
12 of Health Services and other appropriate governmental
13 agencies. Such condition renders the land and the owner,
14 lessee, or other possessor of the Property subject to the
15 requirements and provisions of Chapter 6.8 of the
16 California Health and Safety Code. This statement is not a
17 declaration that a hazard exists."

18 3.6 Concurrence of Owners Presumed. All purchasers, lessees,
19 or possessors, of any portion of the Property shall be deemed,
20 by their purchase, leasing or possession of such Property, to be
21 in accord with the foregoing and to agree for and among
22 themselves, their heirs, successors, and assignees, and the
23 agents, employees and lessees of such owners, heirs, successors
24 and assignees, that the provisions of this Declaration shall be
25 adhered to for the benefit of future Owners and Occupants and
26 that their interest in the Property shall be subject hereto.
27

ARTICLE IV

MODIFICATION AND TERMINATION

4.1 Modification. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a modification of any of the provisions of this Declaration. Such application shall contain (i) the identification of the applicant for the modification, (ii) a statement of the proposed modification, and (iii) a statement of reasons in support of the proposed modification. In addition, the applicant shall demonstrate to the reasonable satisfaction of the Department that the proposed modification will not cause or allow any of the following effects:

1. The creation or increase of significant present or future hazards to public health.
2. Any significant diminution of the ability of the Plan to mitigate any significant potential or actual hazard to public health.
3. Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well being, or safety of the public.

1 Upon making his or her decision to approve or deny the proposed
2 modification, the Administrator shall issue and deliver his or
3 her decision and findings of fact to the applicant and any other
4 interested persons. If the Department agrees to the proposed
5 modification, the Administrator and all of the Owners of the
6 Property shall execute an instrument reflecting such
7 modification. Such instrument shall particularly describe the
8 Property and, if applicable, the specific location of any
9 portion of the Property affected by the modification. Owner
10 shall record the instrument in the official records of the
11 Contra Costa County within ten (10) days of the date of
12 execution.

13
14 4.2 Termination. Any Owner or, with the Owner's consent, any
15 Occupant of the Property or a portion thereof may apply to the
16 Department for the termination of this Declaration as to all or
17 any portion of the Property on the grounds that the waste
18 contained within the Property no longer creates a significant
19 existing or potential hazard to present or future public health
20 or safety. Such application shall contain sufficient evidence
21 for the Department to make a finding upon any or all of the
22 following grounds:

- 23
24 1. The hazardous waste contained within the Property has since
25 been removed or altered in a manner which precludes any
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significant existing or potential hazard to present or future public health.

2. New scientific evidence is available concerning either of the following:

- a) The nature of the hazardous waste contamination; or
- b) The geology or other physical environmental characteristics of the Property.

Upon making his or her decision to approve or deny the proposed termination, the Administrator shall issue and deliver his or her decision and findings of fact to the applicant and any other interested person. If the Department agrees to the proposed termination of this Declaration, the Administrator and all of the Owners of the Property shall execute an instrument reflecting such termination. Owner shall record such instrument in the official records of Contra Costa County.

4.3 Term. Unless terminated in accordance with Section 4.2 above, by law or otherwise, this Declaration shall continue in effect in perpetuity.

ARTICLE V

GENERAL PROVISIONS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication or offer of a gift or dedication of the Property or any portion thereof to the general public or for any purpose whatsoever.

5.2 Provisions to Run with the Land. This Declaration sets forth, for the mutual benefit of the Property, the Owners and Occupants thereof, and the People of the State of California, acting by and through the Department, protective provisions, covenants, limitations, and conditions (collectively the "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed. Each and all of the Restrictions shall run with the land, shall inure to the benefit of and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed pursuant to Chapter 6.8, Division 20 of the Health and Safety Code and run with the land pursuant to Chapter 6.8, Division 20 of the Health and Safety Code and Section 1466 of the Civil Code. Each and all of the Restrictions shall be for the benefit of, and enforceable by, the Department.

1 5.3 Notices. Whenever any person shall desire to give or serve
2 any notice, demand or other communication with respect to this
3 Declaration, each such notice, demand or other communication
4 shall be in writing and shall be deemed effective (i) when
5 delivered if personally delivered to the person being served or
6 to an officer of a corporate party being served, or official of
7 a government agency being served, or (ii) three (3) business
8 days after deposit in the mail if mailed by United States mail,
9 postage prepaid:

10
11 TO: Santa Fe Pacific Realty Corporation
12 201 Mission Street
13 San Francisco, CA 94105
14 Attn: Chief Executive Officer

15 WITH COPY TO: Clay M. Smith
16 Assistant General Counsel
17 Santa Fe Pacific Realty Corporation
18 3230 East Imperial Highway, Suite 100
19 Brea, CA 92621
20

21 TO: Howard K. Hatayama
22 Regional Administrator
23 California Department of Health Services
24 Toxic Substances Control Program
25 2151 Berkeley Way, Annex 9
26 Berkeley, CA 94704
27

1 5.4 Partial Invalidity. If any portion of this Declaration is
2 determined to be invalid for any reason, the remaining portion
3 shall remain in full force and effect as if such invalid portion
4 had not been included herein.

5
6 5.5 Article Headings. Headings at the beginning of each
7 numbered article of this Declaration are solely for the
8 convenience of the parties and are not a part of this
9 Declaration.

10
11 5.6 Recordation. This instrument shall be executed by the
12 Owner of the Property and by the Administrator. This instrument
13 shall be recorded by the Owner in the official records of the
14 County of Contra Costa within ten (10) days of the date of
15 execution.

16
17 5.7 Statement Regarding Hazard. This Declaration is not, and
18 shall not be construed as a statement or declaration that any
19 existing or potential health, environment or other hazard exists
20 or will exist on the Property.

21
22 5.8 Confirmation of Compliance. At any time during the term of
23 this Declaration, Owner may request in writing that the
24 Department give written confirmation that Owner is then in
25 compliance with the terms and provisions of the Declaration.
26
27

1 The Department shall respond in writing within thirty (30) days
2 after its receipt of such request and shall either state (i)
3 that, insofar as the Department is aware, Owner is in compliance
4 with the terms and provisions of this Declaration, or (ii) the
5 specific manner in which the Department contends that Owner is
6 not in such compliance. In the event that the Department fails
7 to give notice within the required period, it shall be presumed
8 that Owner is in compliance with the terms and provisions of
9 this Declaration.

10
11 EXECUTED BY:

12
13 CALIFORNIA DEPARTMENT
14 OF HEALTH SERVICES

SANTA FE PACIFIC
REALTY CORPORATION
A Delaware Corporation

15
16 By: Howard K. Hatayama
Howard K. Hatayama

15
16 By: Vernon B. Schwartz
Vernon B. Schwartz

17
18 Title: Regional Admin.

17
18 Title: President

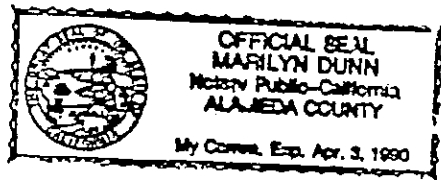
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20 Date: 2/23/90

19
20 Date: 2/19/90

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF ALAMEDA)
4)
5)
6)
7)

8 On February 23, 1990, before me, the undersigned, a
9 Notary Public in and for said state, personally appeared
10 Howard K. Hatayama, proved to me on the basis of satisfactory
11 evidence to be the person who executed the within instrument as
12 Regional Administrator of the Department of Health Services,
13 Toxic Substances Control Program, Region 2 that executed the
14 within instrument, and acknowledged to me that such corporation
15 executed the same pursuant to its bylaws or a resolution of its
16 board of directors.

17
18 WITNESS my hand and official seal.
19



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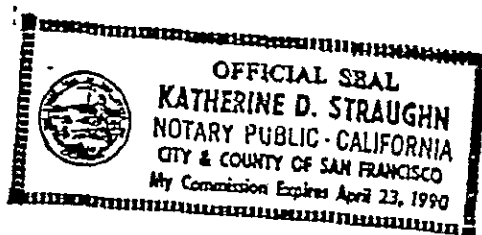
Marilyn Dunn

Notary Public in and for said
County and State

1 STATE OF CALIFORNIA)
2)
3 SAN FRANCISCO)
4 ~~NOTARY PUBLIC~~ COUNTY)
5 _____)
6
7

8 On February 19, 1990, before me, the undersigned,
9 a Notary Public in and for said state, personally appeared
10 VERNON B. SCHWARTZ, personally known to me or proved to me
11 on the basis of satisfactory evidence to be the person who
12 executed the within instrument as President of the corporation
13 that executed the within instrument, and acknowledged to me that
14 such corporation executed the same pursuant to its bylaws or a
15 resolution of its board of directors.
16

17 WITNESS my hand and official seal.
18
19



Katherine D. Straughn
Notary Public in and for said
County and State

EXHIBIT A

The description of the Property is as follows:

Lots 3, 4, 5, 13, 14, 15, 19, and 20 of Section 29, Township 1 North, Range 4 West, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM: All the lands lying northerly, northeasterly and easterly of the southerly, southwesterly and westerly boundary of the parcel of land granted in the Deed to the Atchison, Topeka and Santa Fe Railway Company, a Kansas Corporation, recorded December 8, 1960, in Book 3759, Page 518, Official Records.

ALSO EXCEPTING THEREFROM: All the lands lying southeasterly of the northwesterly boundary of the parcel of land granted in the Deed to the United States Postal Service, recorded December 19, 1972, in Book 6824, Page 476, Official Records.

ALSO EXCEPTING THEREFROM: The westerly 112.98 feet of said Lots 13 and 20 referred to above.

ALSO EXCEPTING that portion of said Lots 4 and 5 referred to above, lying southerly and westerly of the following described line: Beginning at a point which lies easterly 112.98 feet from

1 the southwesterly corner of said Lot 4, thence from said point
2 of beginning, North 410.00 feet, thence North 30 degrees 00'00'
3 West to the southerly boundary of the parcel of land granted in
4 the Deed to the Atchison, Topeka and Santa Fe Railway Company,
5 recorded December 8, 1960, in Book 3759, Page 218, being the
6 northerly terminus of said line.

7
8 Said Parcel also being known as Assessor's Parcel Number
9 560-010-034.

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END OF DOCUMENT